

each programmer would get \$2.50 per network. This will have a total programming cost of \$5 for the two networks. On the other hand, if one programmer possessed both networks, then it could charge for a bundle of the two networks for a price of \$7.50, the value of the network is \$15 and the programmer gets one half of the surplus.

These programming effects do not rely on the networks being close substitutes, but on the fact that the value of additional networks has diminishing value to an MVPD. Suppose that the MVPD valued the first network  $T$  and the value for a second network  $T(1-x)$ , where  $x$  is a number between 0 and 1. If the value of  $x$  is 0, then the networks have independent marginal values of  $T$  each, while if it is 1, the networks are perfect substitutes and the marginal value for each is 0. If the networks are owned separately, then each would be able to get one half their marginal valuations from an MVPD of  $T(1-x)/2$  for a total programming cost of  $T(1-x)$ . On the other hand, if one programmer owns both networks, then the total value is  $T(2-x)$ . If the programmer receives one half the value of the network, then it receives  $T(1-x/2)$ , for an increase in programming costs of  $Tx/2$ . So, even if the networks are not close substitutes the combining of assets could lead to substantial cost increases. The FCC agreed with this analysis in the Comcast-NBCU Order.<sup>30</sup> In particular, the FCC's analysis examined the case where a Fox O&O broadcast TV station and a Fox RSN were available in the same local market under the joint ownership of News Corp., relative to a control group of RSNs not under joint ownership with a broadcast station.<sup>31</sup>

Given that both the NBC O&O and the TWC RSNs are considered by the FCC to be "must have" programming, the horizontal harm due to this combination of programming assets is substantial.

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<sup>30</sup> *Comcast-NBCU Order*, 26 FCC Rcd at 4247, ¶ Appendix B, Technical Appendix, Section I.C.

<sup>31</sup> *Id.*

Because Comcast has both of these program forms in the two largest media market in the United States, the potential for harm to all MVPD providers in the markets where the programming is made available will be substantial.

#### B. Increased Comcast Bargaining Buying Power in the Programming Market

Comcast will be able to demand lower prices from programmer by growing from 21 million subscribers to 29 million subscribers. The 29 million subscribers is nearly the 30% of the market that the FCC once demarcated as the maximum that any MVPD may have in order to reduce the possibility that if that MVPD refuses to buy the programming, there will be enough remaining MVPDs the programmer can sell to and still be able to cover its costs.<sup>32</sup> I agree with the FCC's historic concerns about buyer concentration in the programming market and that this will lead to lower prices for Comcast.

By obtaining lower prices, Comcast will increase the profitability per subscriber for Comcast and using equation 1, this will lead to an increase in the opportunity cost for Comcast to sell its programs to rival MVPDs. This will lead to higher Comcast programming prices for these MVPDs and these increases in costs will in part be borne by subscribers.

Furthermore, when responding to some critics, Rosston and Topper<sup>33</sup> (paragraph 185) argue:

Comcast would gain market power against content providers because it would be a post transaction "bottleneck" that prevents a network from reaching a national audience and being commercially viable. Comcast will not become

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<sup>32</sup> *Third Report and Order, In the Matter of Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992: Horizontal Ownership Limits, FCC 99-264; MM Docket No. 92-264 (Released: 20 October 1999).*

<sup>33</sup> See Footnote 24.

such a “bottleneck” as content providers have a large open field other than Comcast for selling their programming after the transaction.

Rosston and Toper are treating the programming market as if being a large buyer does not increase a firm’s market power, because no individual MVPD is essential for any given programmer or broadcaster to profitably be in the market. Unfortunately, in the programming market it is well-known that larger MVPDs get much better programming rates than smaller ones. It flies in the face of reality to think that by enlarging, Comcast will gain no additional market power as a purchaser in the programming market. If Comcast lost market power, and had to pay higher prices, then this would be a very large incentive not to merge with TWC. The merger will lead to higher profitability per subscriber due to the lower costs of buying programs, and again, a higher opportunity cost for Comcast to selling its programs to its competitors.<sup>34</sup> Furthermore, and most strikingly, if TWC and Comcast thought that the merger would mean paying higher programming prices, then they would not allow [[REDACTED]] This is another piece of evidence suggesting Comcast will get better pricing from programmers as a result of the transaction with TWC and Charter.

It is useful to realize that getting lower programming prices gives exactly the same mechanism for raising the opportunity costs of selling programs to rivals discussed above due to the alleged efficiencies that could arise from the merger.

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<sup>34</sup> In their arguments on this topic, Rosston and Toper referenced “The Role of Firm Size in Bilateral Bargaining: A Study of the Cable Television Industry” by Tasneem Chitty and Christopher Snyder, Review of Economics and Statistics, (1999) 81(2):326-340. Their study showed that there is a theoretical possibility that merging can hurt a buyer’s bargaining power; if the seller’s gross surplus selling function is convex and demonstrate that this is often the case in their study. There are problems with using this study. For example, they make an assumption that buyers –MVPDs– do not compete with other MVPDs, which is clearly not true given the overlap between many if not most MVPD coverage areas. The assumption of MVPDs not competing may have been reasonable given that the data set they used ended in 1993, but it is clearly not a reasonable assumption now.

Operators of small cable systems insist, based on their experiences purchasing programming, Comcast obtaining lower prices will result in smaller MVPDs paying higher prices. Empirical data indicate that this is in fact what happens in the marketplace today when programmers do not receive what they expect from Comcast in their negotiations. The data suggest this effect would continue and be made worse as Comcast's bargaining power increases. From an economic standpoint, this assertion can be explained as follows: when publicly held programming firms address market analysts they often promise to achieve a given rate of return in order to convince the analysts to recommend to their clients that they buy the programmer's stock. In other words, they tell a revenue growth story. This is a commitment by the programmer to achieve higher rates of return. If the programmer does not meet Wall Street's expectations, it could lead to a drop in the programmer's stock. It is much more difficult for a programmer to try negotiate a substantial price increase with Comcast than a smaller MVPD, because Comcast is seen as being a "must have" program distributor, whereas a programmer would not be hurt as much if a smaller MVPD did not carry its programs. If the programmer must give Comcast a lower price in return for carriage of its programming, then it must turn to other buyers – the smaller MVPDs – to make up the difference or the revenue-growth story told to Wall Street becomes invalid. This ability to commit to given rates of return provides an economic linkage between the prices paid by rival MVPDs and Comcast.

Finally, some commentators (See, e.g. Wallsten<sup>35</sup>) claim that it is unclear whether the price of programming will increase if Comcast becomes larger, because as Comcast becomes larger, programming becomes more important to it. Wallsten alludes to some work where a firm that obtained

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<sup>35</sup> An Economic Analysis of the Proposed Comcast/Time Warner Cable Merger by Scott Wallsten, May 2014

more market power actually paid a higher price for an input.<sup>36</sup> The problem with this argument is that the marginal incentives change for the programmer due to Comcast's size but they do not for Comcast. The fact that Comcast becomes larger does not make the programming more valuable, because Comcast receives the same profit per subscriber.<sup>37</sup>

The bottom line is that the largest MVPDs get lower programming prices and this will raise the opportunity costs for selling programs to rival MVPDs.

## V. The Problems with the FCC's Arbitration Remedy

A programming dispute between Comcast and an MVPD could be settled by the MVPD invoking its right to take the dispute to commercial arbitration using the "final offer" or "baseball" style arbitration remedy imposed on Comcast-NBCU by the FCC as a condition of approving the license transfers associated with the merger.<sup>38</sup> Under this form of arbitration, each side presents an arbitrator with a proposed resolution – its "final offer" – and the arbitrator picks the proposal that most closely approximates the "fair market value" of the programming. To improve use of the remedy for smaller MVPDs, the FCC directed that if Comcast's "final offer" is not chosen by the arbitrator, Comcast must pay the winning MVPD's legal costs associated with taking the case to arbitration.

I note that MVPDs who are members of the NCTC generally have the option of opting into the buying group's master agreements at the prices established pursuant to that deal. NCTC currently has a master agreement with Comcast for its national cable programming and for its ten NBC O&O

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<sup>36</sup> See footnote 35.

<sup>37</sup> Wallsten (2014) says that one hypothesis for why Comcast obtains lower prices is that Comcast is in a better position to make long term commitments to programmers than smaller MVPDs. This possible hypothesis has no basis in fact.

<sup>38</sup> *Comcast-NBCU Order*, 26 FCC Rcd at 4247, ¶¶49-59.

stations. If an NCTC member expects to opt into the NCTC deal with Comcast, then they would not be expected to negotiate directly with Comcast. NCTC does not have, and has never had, an agreement for Comcast's RSN programming. For this programming, an NCTC member must negotiate with Comcast directly for RSN programming owned by Comcast.

Despite the availability of an arbitration process, even one with special provisions for smaller MVPDs, a smaller operator is unlikely to use it and is therefore effectively lacking any remedy for the recognized competitive harms created by the merger. One reason for this is that smaller MVPDs or the NCTC lack information about the fair market value of Comcast's programming. This leads smaller MVPDs and NCTC to believe their chances of prevailing in arbitration are low. Comcast recognizes that MVPDs that purchase its programming, particularly those that are small or the NCTC, have little confidence in being able to win an arbitration for this reason, and negotiate without fear that the arbitration condition will be invoked against them. This undermines a key reason why the FCC imposes its arbitration conditions: "Our arbitration condition is intended to push parties towards agreement prior to a breakdown in negotiations."<sup>39</sup> In other words, the MVPD will likely pay a higher price or face less reasonable terms as a result of the Comcast/TWC transactions.

#### A. Comcast's Informational Advantage Over Other MVPDs, Including Bargaining Agents

In considering whether to utilize baseball style arbitration, the NCTC and/or a smaller MVPD will know only the contracts it has for such programming, and for broadcast and regional sports

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<sup>39</sup> *Id.* at ¶ 59. Continuing, the FCC stated: "Final offer arbitration has the attractive 'ability to induce two sides to reach their own agreement, lest they risk the possibility that a relatively extreme offer of the other side may be selected by the arbitrator. We find that the availability of an arbitration remedy will support market forces and help prevent this transaction from distorting the marketplace."

networks. Their knowledge of the market may be even more limited. This will lead the NCTC or smaller MVPDs to believe their chances of choosing a final offer that is close to Comcast's programming's fair market value is low.

This lack of information that an MVPD will have when trying to estimate how an arbitrator will determine the fair market value of programming is multi-faceted. The NCTC or smaller MVPD lack information concerning: (i) the previous prices that Comcast charged to other MVPDs for programming; (ii) how its programming prices varied with MVPD size, that is the size of the "bargaining premium" paid by small MVPDs; and (iii) Comcast's cost of acquiring the programming.

Exacerbating the lack of critical information is that fact that Comcast will likely have more and better information about what is fair market value for the programming that it sells, because it possesses all the contracts that it has with the other MVPDs that carry its programming, and thus the market in general. This gives Comcast a strong advantage over NCTC or a smaller MVPD in how it makes its offer in a baseball-style arbitration process. Because an MVPD or the NCTC will lack the critical information in order to make a viable final offer, and will also know that Comcast will be much better able to make a proposal that will be accepted, there is a low likelihood that either will go to arbitration in the first place. The informational advantage that Comcast has is such a high hurdle that almost no firm, particularly the NCTC or smaller MVPDs, will take it to arbitration as it is currently constituted. It would actually be against the odds for an MVPD to win an arbitration given the informational advantage that Comcast has. These informational advantages favor Comcast and it will be able to act without concerns of being taken to arbitration.

#### B. Other Problems with the Arbitration Process

There are other reasons why the arbitration process is stacked against smaller MVPDs. First, an MVPD has to have the ability to finance the cost of arbitration. For a small firm this is not necessarily an easy thing. The legal costs of arbitration can be quite high about \$1 million, and the process may take many years to reach a resolution. For a small MVPD with relatively low capitalization, the liquidity constraints that it may face may make the possibility of fronting this legal cost infeasible. Therefore, the option to take on a very well-capitalized firm such as Comcast is not possible no matter how strong its case is and no matter how large the potential gain that it expects to achieve through arbitration. That is, even if a small MVPD is convinced with probability one that it will win the case and eventually be compensated for all its legal fees, it will not be able to afford to bring the case no matter how badly Comcast is treating the MVPD.

Second, most of the smaller MVPDs are not publicly traded corporations and for their major , the investment represents a large portion of their portfolios. If this is the case, the firm is likely to behave in a risk-averse manner. This implies that the owners of these companies have a low tolerance for risk. This will make it less likely to go to arbitration, because it faces a chance of a very bad outcome of losing the arbitration, facing the fee increase and paying all the legal fees it incurred in the arbitration process.

Finally, because Comcast will be negotiating with every MVPD and possibly face arbitration with each of them, it has an incentive to establish a reputation of being very difficult to take to the arbitration process. It has both the ability and incentive to spend vast amounts of resources in terms of time and money if it is taken to arbitration in order to signal to all MVPDs that the arbitration process will be very costly. Comcast is likely to do this, and this will be observed by all the other MVPDs, greatly reducing their incentives to engage in the arbitration process with Comcast which is exactly

what Comcast would like. Comcast has an incentive to punish an MVPD for taking it to arbitration. It wants a reputation of being tough so that other MVPDs do not challenge Comcast in arbitration.

### C. Algebraic Representation of Process

I will now show algebraically, that even without the above concerns, the arbitration process as it is currently designed is inadequate for smaller MVPDs. Even assuming that the MVPD believes it has a 50/50 chance of winning the arbitration, and it has one-way fee shifting, a smaller MVPD still will not utilize the arbitration condition. Thus, either stronger arbitration conditions or some other mechanism needs to be provided to deal with the imbalance between Comcast and these smaller MVPDs. This will help explain why no small MVPD has taken Comcast to the arbitration process since the merger.

Suppose that an MVPD and Comcast are in a dispute and the MVPD is thinking of taking Comcast to arbitration. Assume that the length of time of the programming contract that is under dispute is three years. The amount of money per subscriber per month that Comcast is demanding above what  $p$  that the MVPD thinks is appropriate is  $\Delta p$ . The number of subscribers that the MVPD has is  $s$  and the probability that the MVPD thinks that it will win in arbitration is  $q$ . Finally, assume that the MVPD's expected legal costs are  $L$ .

The MVPD's costs if it does acquiesces to Comcast's demand of a price of  $p + \Delta p$  and not go to arbitration is

$$(p + \Delta p) * 36s$$

This is the three-year cost of complying with Comcast's demand.

If the MVPD takes Comcast to arbitration, then its expected cost is

$$q(36ps) + (1 - q)[(p + \Delta p)36s + L].$$

The first term is the probability that the MVPD wins the arbitration,  $q$ , times the annual cost of the MVPD's offer. By winning the arbitration, the MVPD does not have to pay  $\Delta p$ , the increase demanded by Comcast or its legal fees. The second terms represent the probability that the MVPD loses in arbitration times the costs in fees paid to Comcast  $(p + \Delta p)36s$  plus its legal fees,  $L$ .

Taking Comcast to arbitration is better for the MVPD if and only if

$$(1 - q)L \leq 36sq\Delta p.$$

This says that the MVPD will consider taking Comcast to arbitration only if its expected legal costs do not exceed its expected cost of acquiescing to Comcast's, from the MVPD's point of view, unreasonable demands.

Next, I present a realistic example of parameter values. Suppose that the MVPD has 10,000 subscribers,  $s$ , the price increase demanded by Comcast is .25,  $\Delta p$ , the probability that the MVPD expects to win the arbitration case is 50%,  $q$ , and the expected legal costs that the MVPD expects to incur are \$1 million. Assume that the MVPD thinks the proper price for Comcast's service should be a dollar (\$1.00), the value of  $p$ . Then the MVPD will not take Comcast to arbitration, because

$$(.50) * (1,000,000) = 500,000 > 45,000 = 36 * (10,000) * (.50) * (.25)$$

Thus, even though the MVPD thinks it has a 50% chance of winning in arbitration, there is one-way fee shifting, and the price increase is 25 cents, or 25% above what the MVPD thinks is the

appropriate price for the services that Comcast is providing, it is not a rational decision for the MVPD to take Comcast to arbitration.

Another way to think about the cost of arbitration is to look at the legal costs as a fraction of the per-subscriber payments. In the example above, there are 10,000 subscribers and the legal cost of arbitrating is a million dollars. Thus, the legal costs are equivalent to 100 dollars per subscriber. Amortized over a year, this would be equivalent to a monthly fee of \$2.77 per month per subscriber even when amortized over 3 years.

This example is actually conservative with respect to the costs an MVPD faces when thinking about arbitration. It does not include any of the non-pecuniary costs that a firm will incur when going through arbitration, such as senior management opportunity costs. The arbitration process, together with any appeals, can last for years and require an enormous amount of executive time. Clearly, for medium and small MVPDs, this is a substantial amount of capital.

## VI. Conclusion

In this paper, I demonstrated that the Comcast-TWC-Charter transactions will cause harm to subscribers in the video market. The transactions exacerbate the harms that were caused by the 2011 Comcast-NBCU merger. The incremental harms include the increased vertical harm due to Comcast's increased overlap with many rival MVPDs. Also, there increased horizontal harms to consumers due to Comcast adding TWC RSNs in Los Angeles and New York and the increased buying power that Comcast will have in the programming market. Both of these effects will increase Comcast's opportunity cost of selling its programs to rival MVPDs and thus will raise the price to the MVPDs and part, if not most, of this increase will be passed on to their subscribers. The arbitration

conditions that were initiated for small and medium-sized MVPDs and their bargaining agent to buy Comcast programming following the merger of Comcast and NBCU were not sufficient to protect these buyers and will be even more inadequate to remedy the harms of the proposed transactions.

## **EXHIBIT B**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Applications of	)	
	)	
Comcast Corp.,	)	
Time Warner Cable, Inc.	)	MB Docket No. 14-57
Charter Communications, Inc., and	)	
SpinCo	)	
	)	
For Consent to Transfer Control of	)	
Licenses and Authorizations	)	

**DECLARATION OF RICH FICKLE**

1. My name is Rich Fickle. I am Chief Executive Officer and President of the National Cable Television Cooperative (NCTC). My business address is 11200 Corporate Avenue, Lenexa, Kansas, 66219.

2. I have been with the NCTC since 2011. In my role, I oversee all operations of NCTC, including the negotiation, execution, and renewal of all content agreements with programmers. I have been working in the cable/media industry for over 25 years. Prior to my role at NCTC, I was involved in the negotiation of programming rights for new forms of distribution using advanced technology, and involved in programming-related decisions as a VP for a cable operator.

3. NCTC is a non-profit cooperative purchasing organization for its member companies that own and operate cable systems throughout the United States and its territories. Almost all small and medium-sized multichannel video programming distributors (MVPDs) are members of the NCTC, which currently has approximately 910 member companies serving

millions of MVPD subscribers. NCTC member companies differ in size. The largest serves millions of subscribers and the smallest serves tens of subscribers. The member-size median is fewer than 1,500 subscribers. NCTC members include traditional cable companies, traditional telephone companies offering video, municipal video providers, and Indian Tribes offering video service.

4. NCTC functions as a buying group, negotiating standardized master agreements with programmers and technology vendors. NCTC acts as an interface between the vendor and individual MVPDs so that the vendor can deal with a single entity for purposes of negotiating contracts, determining technical standards, billing for payments, collecting payments, and marketing. These acts provide efficiency to the supplier because they reduce the transaction costs of dealing separately with hundreds of small and medium-sized MVPDs so that the costs are comparable to the transaction costs of dealing with a single large MVPD. MVPDs benefit because they receive lower rates and better terms and conditions than they would receive through direct deals.

5. Small and medium-sized MVPDs generally license most of their programming through the NCTC. NCTC has master agreements with the vast majority of cable networks. The largest four members of the NCTC are not actively engaged in NCTC agreements aside from a few minor programming agreements and therefore are considered by NCTC to be inactive.

6. Excluding its four largest members, many of NCTC's member companies compete across the country with the largest MVPDs, specifically Comcast, Time Warner Cable and Charter. NCTC members principally compete against larger MVPDs by providing superior customer service, which is often driven by being locally owned and operated. In addition, some

members compete by being faster to embrace technology innovation where possible (e.g. fiber-to-the-home and IPTV).

7. I believe that if the Comcast/TWC/Charter deal is approved, programming vendors will receive less value for their programming in the near and long term from the combined companies than they would receive if the companies remained under separate ownership and control. This will happen for three reasons. First, to the extent permissible, Comcast will bring the TWC systems under its existing programming agreements where the per-subscriber price paid by Comcast is lower. This will result in the programmers receiving less revenue from the TWC systems than they receive today. Second, as a result of growing from 21.1 million to up to 31.4 million video subscribers (to the extent Comcast negotiates on behalf of Bright House Networks and Midcontinent), Comcast will be in a better position to harm programmers by withholding or threatening to withhold access to its increased subscriber base. Accordingly Comcast will be able to obtain lower programming prices from its programming suppliers. Third, as a result of Charter's subscriber base growing from 4.2 million to up to 8 million subscribers (to the extent it negotiates on behalf of SpinCo), Charter will also have more bargaining power against the programmers, and be able to command better rates, terms and conditions from programmers.

8. As a result of Comcast's and Charter's ability to pay less for programming, I expect the largest programming/media companies – which have significant bargaining leverage– will extract higher fees and more onerous terms and conditions from other MVPDs in the market and NCTC. There is already a significant difference between the programming fees paid by Comcast and those paid by NCTC members, and I expect the Comcast/TWC/Charter deal will significantly increase this difference.

9. I see this seesaw effect play out in the market today. Currently, NCTC faces increased demands from programmers resulting from the concessions that they grant large MVPDs such as Comcast and TWC. Programmers acknowledge during negotiations with the NCTC their need to make up the revenue amounts they are not able to secure from Comcast, TWC or other large MVPDs. Specifically, some programmers have stated their intention to make up lost revenues resulting from their negotiations with Comcast, TWC or others directly through their agreements with NCTC members and other small MVPDs. There is no reason to believe that programmers won't continue to seek concessions from NCTC to make up for the increase in lost revenues after the Comcast/TWC/Charter deal is approved. The Comcast/TWC/Charter merger will put programmers in an even worse position in their negotiations with Comcast and Charter. This is why I expect programmers to make up revenues on the backs of small cable operators in the event the Comcast/TWC/Charter deals are approved.

10. Because our members' video footprint currently overlaps with Comcast by a significant amount, Comcast has an incentive and ability to charge the NCTC and its members higher prices for its programming than it would charge NCTC if none of its members competed with Comcast. The same is true with regard to Discovery and Starz, which are attributable to Charter. Due to Charter's competitive overlap with NCTC members, these programmers have an incentive to seek higher prices.

11. During our most recent renewal negotiations with Comcast/NBCU at the end of 2012, NCTC considered utilizing the "baseball-style" arbitration condition the FCC imposed on Comcast when it acquired NBCU. NCTC had reason to believe that Comcast/NBCU was not offering us fair market rates, terms, and conditions. However, after careful consideration, NCTC decided that the arbitration condition was inadequate and ineffective, even with one-way fee

shifting in the event we won, to address, the unfair demands of Comcast/NBCU. Following are a few reasons that the condition was inadequate and ineffective.

12. First, NCTC did not feel it could reasonably evaluate its likelihood of success in an arbitration proceeding because we lacked critical information on key factors that an arbitrator would likely use to make its determination of fair-market value. Without this information we could not make an informed "final offer."

13. At the same time, Comcast/NBCU had perfect information. Comcast/NBCU possessed information on the prices it currently and formerly charged other MVPDs for its programming. It also knew the prices it granted to larger MVPDs as opposed to smaller MVPDs, and what other programmers charged for similar programming, particularly with regard to broadcast stations due to the fact that Comcast operated as an MVPD in dozens of designated market areas. We knew with all of this information available to them, they would be able to more accurately calculate a fair market value and provide it as its "final offer." Moreover, an arbitrator would find the information that Comcast had highly probative, and would likely rely upon it in determining which of the parties' "final offer" is closer to fair market value. Having access to this information in advance of making a "final offer" gives Comcast a huge advantage and makes their chances of winning higher than ours. This information imbalance exacerbates NCTC's problem of a lack of information as described above.

14. NCTC also recognized that it would incur significant costs if it pursued arbitration. From our understanding, and based on our own due diligence in examining use of the arbitration condition, the average cost of baseball-style arbitration is approximately \$1 million. This represents a significant cost compared to both NCTC's annual operating budget and our best guess at how much Comcast was charging us above the fair market value of the programming.

15. The lack of critical information to make an informed "final offer," the fact that Comcast had the information it needed to make an informed "final offer," and the costs and uncertain time frame made arbitration an unworkable solution. In sum, NCTC perceived the risks and costs of baseball-style arbitration to outweigh any potential benefits that may result from the arbitration. For these reasons, in our negotiations with NBCU, although we felt we were being overcharged, we did not take advantage of the baseball-style arbitration condition. We just agreed to the final prices, terms, and conditions demanded by Comcast/NBCU.

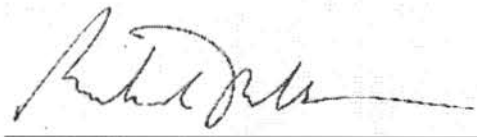
16. Without adequate remedies, consumers and competition will suffer from the Comcast/TWC/Charter deals. First, allowing the programming fee difference between large and small MVPDs to grow will hinder the ability of smaller MVPDs to compete with both Comcast/TWC and Charter/SpinCo. Second, allowing programming fees for smaller operators to rise due to this merger will result in further loss of video margins, and this will reduce their ability to make additional investments in rural markets to deploy advanced broadband and new services. Third, smaller independent programmers will be less likely to reach viable scale without obtaining carriage at reasonable terms from Comcast/TWC and Charter/SpinCo, which may have the effect of reducing diversity in the programming market.

17. Finally, with so many subscribers, Comcast/TWC and Charter/SpinCo will be in a better position to drive standards for video distribution technologies with programmers, which could result in their settling on standards that are better for Comcast and Charter but much more costly for small and mid-size cable operators to implement, further exacerbating their inability to compete. In addition, the combined entity can invest in large R&D efforts resulting in unique technology and service offerings not available to smaller operators. Many existing technology

vendors will have fewer opportunities for growth and therefore will tend to reduce R&D spending. The market appeal for new technology suppliers may also be dampened.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information and belief.

Executed on August 25, 2014.

A handwritten signature in black ink, appearing to read 'Rich Fickle', is written over a horizontal line.

Rich Fickle